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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 GEOFFREY ROBERT LAWSON,

9 Plaintiff,

10 v.

11 OCWEN LOAN SERVICING, LLC, et  
12 al.,

13 Defendants.

CASE NO. C10-5481BHS

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS

14 This matter comes before the Court on Defendant Regional Trustee Services  
15 Corporation's ("Regional") motion to dismiss (Dkt. 64) and Quality Loan Services  
16 Corporation of Washington's ("Quality") joinder in that motion (Dkt. 67). The Court has  
17 reviewed the briefs filed in support of and in opposition to the motion and the remainder  
18 of the file and hereby grants in part and denies in part the motion for the reasons stated  
19 herein.

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21 **I. PROCEDURAL HISTORY**

22 On July 21, 2010, Plaintiff Geoffrey Robert Lawson ("Lawson") filed his second  
23 amended complaint. Dkt. 10. On September 24, 2010, Defendants Morgan Stanley Dean  
24 Witter Capital I Inc Trust 2001-NC3, Ocwen FSB, Ocwen Financial Corporation, and  
25 Ocwen Loan Servicing, LLC filed a motion to dismiss. Dkt. 25. Quality joined in the  
26 motion to dismiss. Dkts. 27 & 28. On February 10, 2011, the Court granted in part and  
27 denied in part the motion. Dkt. 49.  
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1 On May 31, 2011, Lawson filed a Third Amended Complaint against Defendants  
2 Ocwen Loan Servicing, LLC; Ocwen FSB; Ocwen Financial Corporation; Ocwen; New  
3 Century Mortgage Corporation; Morgan Stanley Dean Witter Capital I, Inc. Trust  
4 2001-nc3, Mortgage Pass-through Certificates, Series 2001-nc3 (“US Bank”); Regional;  
5 Quality Loan Services Corporation of Washington (“Quality”); Assignees; Affiliates and  
6 Representatives. Dkt. 62.

7 On July 25, 2011, Regional filed a motion to dismiss. Dkt. 64. On July 28, 2011,  
8 Quality filed a brief joining in the motion to dismiss. Dkt. 67. On August 9, 2011,  
9 Lawson responded. Dkt. 69. On August 16, 2011, Regional replied. Dkt. 71. On  
10 August 17, 2011, Quality replied. Dkt. 72.

## 11 **II. FACTUAL BACKGROUND**

12 The subject of this action is a home and property (“Property”) located in  
13 Bremerton, Washington, of which Lawson claims to be the rightful owner. Dkt. 62, ¶ 43.  
14 Regional, a foreclosure services company, was engaged by Ocwen to conduct a  
15 foreclosure on the Property in the name of the then current beneficiary U.S. Bank,  
16 National Association, as Trustee under the Pooling and Servicing Agreement Dated  
17 November 1, 2001 Morgan Stanley Dean Witter Capital I Inc., Trust 2001-NC3 (“US  
18 Bank”). Dkt. 65, Exh. A. On several occasions, the sale was postponed per instructions  
19 by Ocwen past the maximum postponement dates, and as such, multiple Notices of  
20 Trustee’s Sale went out each in the name of U.S. Bank. *Id.*, Exhs. B-F.

## 21 **III. DISCUSSION**

### 22 **A. Motion to Dismiss Standard**

23 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil  
24 Procedure may be based on either the lack of a cognizable legal theory or the absence of  
25 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901  
26 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the  
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1 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301  
2 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed  
3 factual allegations but must provide the grounds for entitlement to relief and not merely a  
4 “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v.*  
5 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege “enough facts to state a  
6 claim to relief that is plausible on its face.” *Id.* at 1974. When deciding a motion to  
7 dismiss, the Court’s consideration is limited to the pleadings. Fed. R. Civ. P. 12(d).

#### 8 **B. Wrongful Foreclosure**

9 In Washington, there is no cause of action for “wrongful foreclosure” when no  
10 foreclosure has in fact occurred. *Vawter v. Quality Loan Svc. Corp. of Wa.*, 707 F. Supp.  
11 2d 1115, 1123-24 (W.D. Wash. 2010); *Engel v. First Am. Tit. Ins. Co.*, 2010 WL 3819372  
12 (W.D. Wash.). Absent a Trustee’s sale of the property, a claim for wrongful foreclosure  
13 must be dismissed as a matter of law. *Vawter*, 707 F. Supp. 2d at 1124.  
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15 In this case, a trustee’s sale has not occurred and the Property has not been  
16 foreclosed. Therefore, the Court grants Regional’s and Quality’s motions to dismiss  
17 Lawson’s claims for wrongful foreclosure.

#### 18 **C. Breach of Contract**

19 A plaintiff in a contract action must allege a valid contract between the parties, a  
20 breach, and resulting damage. *Lehrer v. State, Dept. of Social and Health Services*, 101  
21 Wn. App. 509, 516 (2000).

22 In this case, Lawson has failed to allege a valid contract between him and either  
23 Regional or Quality. Therefore, the Court grants Regional’s and Quality’s motions to  
24 dismiss Lawson’s claims for breach of contract.

#### 25 **D. RESPA and Washington Consumer Loan Act**

26 RESPA requires that a “loan servicer” must provide certain information upon  
27 receiving from the borrower a qualified written request (“QWR”) “for information  
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1 relating to the servicing of such a loan.” 12 U.S.C. § 2605(e)(1)(A). “The term ‘servicer’  
2 means the person responsible for servicing of a loan . . . .” *Id.* § 2605(i)(2). Similarly,  
3 the Washington Consumer Loan Act (“CLA”) only applies to loan servicers. RCW  
4 31.04.290.

5 In this case, Lawson has failed to allege that either Regional or Quality are loan  
6 servicers. Therefore, the Court grants Regional’s and Quality’s motions to dismiss  
7 Lawson’s claims for violations of RESPA and the CLA.

#### 8 **E. Fair Debt Collection Practices Act**

9 Lawson’s next claim for relief alleges violations of the Fair Debt Collection  
10 Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.* Section 1692k provides a private  
11 right of action against “any debt collector who fails to comply with any provision of” the  
12 act.

13 In this case, Lawson asserts the following allegations: (1) Defendants  
14 misrepresented that they were foreclosing in the name of New Century Mortgage  
15 Corporation (Dkt. 62, ¶ 121); (2) Defendants failed to respond to his alleged Qualified  
16 Written Request (*id.*, ¶¶ 122-124 & 127); (3) Defendants failed to properly account for  
17 forbearance payments (*id.*, ¶ 125); and (4) Defendants failed to accurately provide payoff  
18 information (*id.*, ¶ 126). Regional and Quality argue that allegations (2)-(4) relate to  
19 actions of the loan servicer and allegation (1) is inaccurate based on the Notice of  
20 Trustee’s Sale documents (Dkt. 65, Exhs. A-D). Lawson has failed to provide any  
21 argument to the contrary, and the Court agrees with Quality and Regional. Therefore, the  
22 Court grants Regional’s and Quality’s motions to dismiss Lawson’s claims for violations  
23 of the FDCPA.  
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#### 25 **F. Washington Consumer Protection Act**

26 “In order to state a claim for relief under the [Consumer Protection Act (“CPA”)],  
27 plaintiffs must allege that acts by defendant were unfair or deceptive, occurred in the  
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1 course of trade or commerce, affected the public interest, and caused injury to plaintiffs'  
2 business" or property. *Segal Co. (Eastern States), Inc. v. Amazon.Com*, 280 F. Supp. 2d  
3 1229, 1232 (W.D. Wash. 2003) (citing *Hangman Ridge Training Stables, Inc. v. Safeco*  
4 *Title Ins. Co.*, 105 Wn. 2d 778, 780 (1986)).

5 In this case, Lawson alleges (1) that Defendants failed to properly certify the  
6 existence and legal standing of New Century Mortgage pursuant to RCW 61.24.030 (7)(a)  
7 (Dkt. 62, ¶ 218); (2) that Quality violated 18 U.S.C. 1341 certifying that New Century  
8 Mortgage was the beneficiary of Lawson's loan (*Id.*, ¶ 219); and (3) Defendants failed to  
9 respond to Lawson's alleged QWRs (*Id.*, ¶ 220). While the Court has dismissed  
10 Lawson's claim based on Regional's and Quality's failure to respond to Lawson's QWRs,  
11 Regional and Quality have failed to show that the other allegations are insufficient to  
12 support a plausible claim for relief. Therefore, the Court denies Regional's and Quality's  
13 motion to dismiss Lawson's CPA claim.  
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#### 15 **G. Remaining Claims**

16 Lawson asserts claims for violations of the Fair Credit Reporting Act; Negligence  
17 and Gross Negligence; Unjust Enrichment; Discrimination; Exemplary Damages;  
18 Declaratory and Injunctive Relief. Dkt. 62, ¶¶ 244-297. Regional and Quality argue that  
19 these claims against them, if they even are asserted against them, fail because the claims  
20 stem from the breach of contract claims and can only be asserted against entities that have  
21 an interest in the property. *See, e.g.*, Dkt. 67 at 7-9. The Court agrees with Regional and  
22 Quality. Therefore, the Court grants Regional's and Quality's motions on these issues  
23 and dismisses Lawson's claims.  
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1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that Regional's motion to dismiss (Dkt. 64)  
3 and Quality's joinder in the motion (Dkt. 67) are **GRANTED in part** and **DENIED in**  
4 **part** as set forth herein.

5 DATED this 13th day of September, 2011.

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8 BENJAMIN H. SETTLE  
9 United States District Judge  
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